

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JOSEPH R. GOURD,**

**Plaintiff,**

**v.**

**9:15-CV-0513 (BKS/DJS)**

**WASHINGTON COUNTY, NEW YORK, *et al*,**

**Defendants.**

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**Appearances:**

**Joseph R. Gourd**

Ballston Spa, NY 12020

Plaintiff, pro se

**Bradley J. Stevens, Esq.**

**Gregg T. Johnson, Esq.**

Lemire, Johnson & Higgins, LLC

P.O. Box 2485

2534 Route 9

Malta, NY 12020

Attorney for Defendants

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff Joseph R. Gourd, a former New York State inmate, commenced this action alleging that the Defendants violated his rights under the Eighth Amendment by failing to prevent and timely stop an assault and battery upon Plaintiff by another inmate. Dkt. No. 1-1. On January 15, 2016, Defendants filed a motion to dismiss under Fed. R. Civ. P. 41 for failure to prosecute. Dkt. No. 20. Plaintiff did not respond to Defendants' motion. On February 8, 2016 a notice that had been mailed to Plaintiff was returned to the Court as undeliverable. Dkt. No. 23.

This matter was referred to United States Magistrate Judge Daniel J. Stewart who, on September 2, 2016, issued a Report-Recommendation and Order recommending that Defendants' motion to dismiss be granted and this action be dismissed. Dkt. No. 24. Magistrate Judge Stewart advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 24, pp. 5-6. No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

For these reasons, it is


**ORDERED** that the Report-Recommendation (Dkt. No. 24) is **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' motion to dismiss for failure to prosecute (Dkt. No. 20) is **GRANTED** and this action is **DISMISSED**; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

**Dated: September 21, 2016**

  
Brenda K. Sannes  
U.S. District Judge